IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9294 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHIDA KISHORESINH PRATAPSINH - Petitioner(s)
Versus
DEPUTY COLLECTOR & 3 - Respondent(s)

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Appearance :

MR VC VAGHELA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 4.
DS AFF.NOT FILED (N) for Respondent(s) : 1 – 3.

Mr Amit Patel, AGP for respondent State.
MS LILU K BHAYA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/05/2007
ORAL JUDGMENT

Rule. With the consent of the learned advocates appearing for the parties the matter is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner, who claims to be a tenant of a Room situate in the property in question, has challenged the order passed by the Deputy Collector, Chhota Udepur, dated 19th March 2007 by which in the application submitted by the original-land owner to the effect that as the building is in a dilapidated condition he has ordered that the building is to be removed. It is not in dispute that before passing the impugned order the petitioner was not given opportunity to put forward his case. If opportunity would have been given then the petitioner might have submitted before the appropriate authority that the application is malafide and it is only with a view to get possession of the property in question and that the condition of the property is not such which warrants removal. Under the circumstances, only on the ground that the impugned order has been passed without giving opportunity to the petitioner, the impugned communication dated 19th

March 2007 is hereby quashed and set aside. The matter is remanded to the Deputy Collector, Chhota Udepur for passing appropriate order in accordance with law and on merits and after giving opportunity to the petitioner as well as the original-landowner. Such exercise be completed within 3 months from today. It is submitted that considering the impugned order the electric supply has been disconnected. It is not in dispute the applicant cannot reside/stay in the premises in question. Under the circumstances, without prejudice to the rights and contentions of the respective parties, the respondent No.4 is directed to restore the electric supply till appropriate decision is taken by the Deputy Collector, on remand, on payment of usual charges.

3. For the reasons stated above, the communication by the Chhota Udepur Nagarpalika dated 19th August 2006 as well as of the Deputy Collector dated 19th March 2007 are hereby quashed

and set aside. The matter is remanded to the concerned authorities for taking appropriate decision in accordance with law and on merits and after giving opportunity to the petitioner as well as to the original land-owner. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

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